

# THE MUNICIPAL WORLD

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## Calendar for May and June, 1902.

### Legal, Educational, Municipal and Other Appointments.

- MAY 1. Last day for treasurers to furnish Bureau of Industries, on form furnished by Department, statistics regarding finances of their municipalities.—Municipal Act, section 293.
- County treasurers to complete and balance their books, charging lands with arrears of taxes.—Assessment Act, section 164.
2. Arbor Day.
5. Make returns of deaths by contagious diseases registered during April.—R. S. O. 1897, chapter 44, section 11.
15. Last day for issuing Tavern and Shop Licenses.—Liquor License Act, section 8' Contents of earth closets to be removed on or before this date.—Public Health Act, schedule B, rule 2, of section 14.
23. Empire Day.
24. Victoria Day.
31. Assessors to settle basis of taxation in Union School Sections.—Public Schools Act, section 54 (1).
- JUNE 1. Public and Separate School Boards to appoint representatives on the High School Entrance Examination Board of Examiners.—High Schools Act, section 41 (2).
- By-law to alter School Boundaries, last day for passing.—Public Schools Act, section 41 (3).
20. Earliest date upon which Statute Labor is to be performed in unincorporated townships.—Assessment Act, section 122.

## NOTICE.

The publisher desires to ensure the regular and prompt delivery of THE WORLD to every subscriber, and requests that any cause of complaint in this particular be reported at once at the office of publication. Subscribers who may change their address should also give prompt notice of same, and in doing so should give both the old and new address.

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# The Municipal World

PUBLISHED MONTHLY

In the Interests of every department of the Municipal Institutions of Ontario.

K. W. MCKAY, EDITOR,

A. W. CAMPBELL, C. E.	} Associate Editors
J. M. GLENN, K. C., LL.B.	

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THE MUNICIPAL WORLD,  
Box 1321, St. Thomas, Ont.

ST. THOMAS, MAY 1, 1902.

The County of Welland proposes to spend \$100,000 on a system of county roads.

\* \* \*

The printed proceedings of the January session of the county council, of the county of Simcoe, contains a full page photo of D. Guinlan, Ex-Warden. This is a new feature which should commend itself to the printing committee of every council.

\* \* \*

At a recent meeting of the council of the town of Walkerton, one of the councillors was ejected from the council chamber, by order of the Mayor, for acting in a disorderly manner. The councillor entered action against the Mayor for damages and the Judge at the trial held that the Mayor acted properly and the jury promptly found a verdict in his favor.

\* \* \*

His Honor Judge Barron, of Stratford, unseated a number of the councillors of the town of Mitchell, on the ground that they were, at the time of their election, members of an organization which had an unsettled claim or account against the municipality, and were, at that time, taking proceedings to enforce a settlement. This decision was confirmed by Chief Justice Mr. W. R. Meredith on appeal to him.

## Electric Lighting.

Gravenhurst and Tottenham have recently passed by-laws for the installation of municipal electric lighting plants, and an electric plant has been established in Ayr by a company. In Collingwood the purchase of a water power near the town is proposed for the purpose of using it in operating the town's electric plant.

## Miscellaneous Municipal Legislation, 1902.

### THE VOTERS' LIST ACT.

The attention of clerks of municipalities is called to section 3, of the Statute Law Amendment Act, 1902, which provides that "section 10, of *The Ontario Voters' Lists Act*, is amended by adding thereto the following sub-section: "(2.) Upon the outside or cover of each of the copies so sent shall be printed, or written conspicuously, the date of posting of the said list, thus: This list was posted up in the clerk's office, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_."

### THE MUNICIPAL WATERWORKS ACT.

Section 24, of the above Act, adds the following to *The Municipal Waterworks Act*: (5) The council of the township, city, town or village, with the assent of the electors of the municipality, to be obtained in the manner provided by *The Municipal Act*, in the case of by-laws for the creation of debts may, by by-law, provide that the commissioners elected, or to be elected for the purposes of this Act, shall have and possess the powers and shall perform the duties of commissioners under *The Municipal Light and Heat Act*, and from and after the passing of such by-law the said commissioners shall be known as "The Water and Light Commissioners of the . . . of . . .," and shall have, possess, enjoy and exercise all the rights, powers and privileges and shall perform all the duties of commissioners under *The Municipal Light and Heat Act* as well as of commissioners elected under this Act.

### THE LIQUOR LICENSE ACT.

Section 105, of *The Liquor License Act*, providing for the curing and amending of convictions and warrants enforcing the same or other process or proceedings under the Act, is repealed by section 25, of the above Act.

### THE DITCHES AND WATERCOURSES ACT.

Section 26 amends *The Ditches and Watercourses Act* by striking out all the words in sub-section 1, of section 28, as amended by section 3, of chap. 28, of the Ontario Statutes, 1899, from the commencement of the said sub-section down to and including the word "interested," in the fourth line, and inserting in lieu thereof the words "the engineer, at the expiration of the time limited by the award for the completion of the ditch, shall inspect the same."

### THE ACT FOR THE IMPROVEMENT OF PUBLIC HIGHWAYS.

Sub-section 1, of section 27, extends the time for payment of debentures issued under the authority of section 9, of this Act, from twenty to thirty years, and sub-section 2 extends the time within which county councils may pass by-laws designating the highways to be improved in the county from the 1st of January, 1903, to the 1st of January, 1904.

### MODE OF ADMINISTERING OATH.

Section 29 provides that "if any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question." The following is the form of the oath administered in Scotland: "I swear by Almighty God, (as I shall answer to God in the great Day of Judgment,) that I will speak the truth, the whole truth, and nothing but the truth." While repeating this oath the witness stands holding up his right hand.

### Toronto University Studies and Local Government.

A department for the study of political science was introduced in Toronto University some years ago and considerable attention has since been directed to the necessity for intelligent enquiry into many subjects of importance to Canada and Ontario, including local government, city conditions, etc.

"The Ontario township" by J. M. McEvoy, B.A., published by the university in 1899 was an evidence of the importance of scientific investigation and research.

We have recently received the first number of volume two of the University Studies, which is devoted to the following municipal subjects:

City Government in Canada, by S. M. Wickett, B. A.

Westmount, a Municipal Illustration, by Mayor W. D. Lighthall.

Municipal Government in Toronto, by S. M. Wickett, and an appendix, containing a list of publications referring to Canadian Municipal Government.

In order that improvement may come in government or business, the first thing needful is to know the precise existing condition of affairs and the leading causes that have operated to bring it about. Dr. Wickett has paved the way for a series of articles on city government and, with the assistance of Mayor Lighthall, has shown what can be done towards ascertaining present conditions.

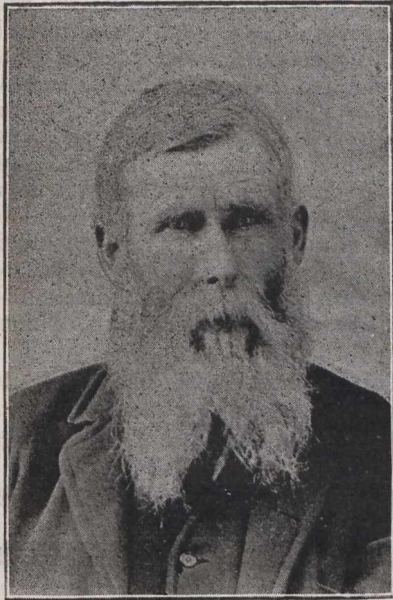
During the past few years, the necessity, for better municipal government in cities, has been brought to the attention of the legislature in many ways. This is in itself sufficient to justify a careful study of the legal foundations of the city in Canada and to make such a study an actual necessity for the information of our representatives and others before they can intelligently enact or criticise amendments to present laws.

The progressive action of the university in publishing the result of investigations in the field of local government will be appreciated by all.

# Municipal Officers of Ontario.

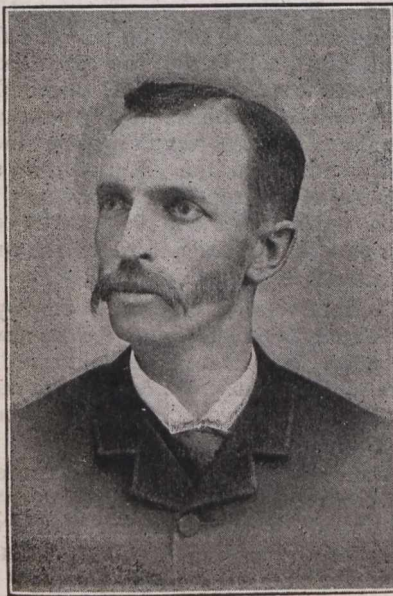
Clerk, Township of Romney.

Mr. Hodgson was born in the township of Tilbury East, in 1844, and in 1851



MR. J. W. HODGSON.

removed to the township of Romney. He was collector in the years 1880 and 1881, and assessor in 1882. He was councillor of his township in 1884-5-6-8 and from 1890 to 1893, inclusive. He was appointed clerk in 1894. He has been secretary treasurer of the Romney Agricultural Society for the past fifteen years,



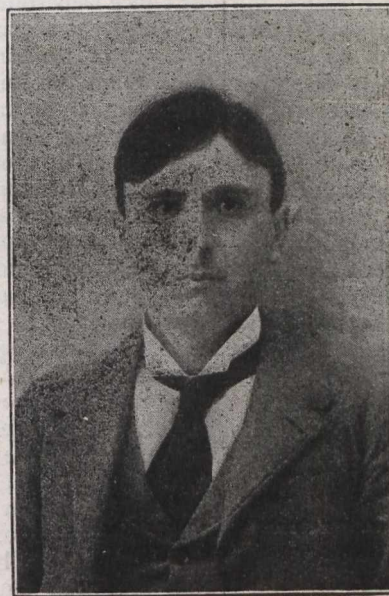
MR. A. H. KILMAN.

and for a number of years was secretary-treasurer of school section No. 7, of his township. His general occupation is

that of a farmer. Mr. Hodgson has missed only one meeting of his council since his appointment as clerk, and that was owing to illness.

Clerk, Township of Bertie.

Mr. Kilman was born in the township of Stamford in 1853. He was educated at the public schools in his township, the Lundy's Lane Grammar School, Ann Arbor University, and the Toronto Normal School. He taught school continuously for twenty-three years up to the year 1897, when he retired from that profession. He was appointed clerk in 1891. He is also a commissioner in H. C. J. conveyancer, and general insurance agent, secretary-treasurer of the Bertie Natural Gas Co., Limited, has been recorder of his A. O. U. W. lodge for twenty-two years, is secretary of



MR. P. E. GUERIN.

Crystal Beach police village, and of the school board, and has been county auditor since 1897.

Clerk, Township of Russell.

Mr. Guerin was born in the year 1874, and taught school for some years prior to his appointment to the office of clerk, in January, of the present year.

He also carries on a general-conveyancing and loan business.

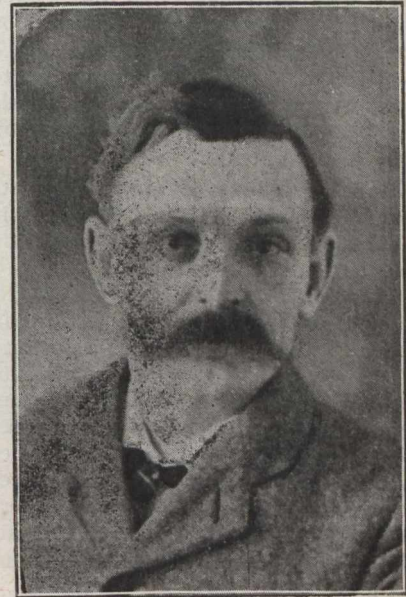
Clerk, Town of Uxbridge.

Mr. Gould was born in Uxbridge (then a village), in the year 1863, and was educated in the public and high schools

of that village, and the Ontario Business College, Belleville. He was book-keeper for Gould Bros., grocers, and flour and feed merchants, in 1885-6, and has been accountant in the private banking house of J. J. Gould & Bros. since June, 1897. He was appointed town clerk in 1899.

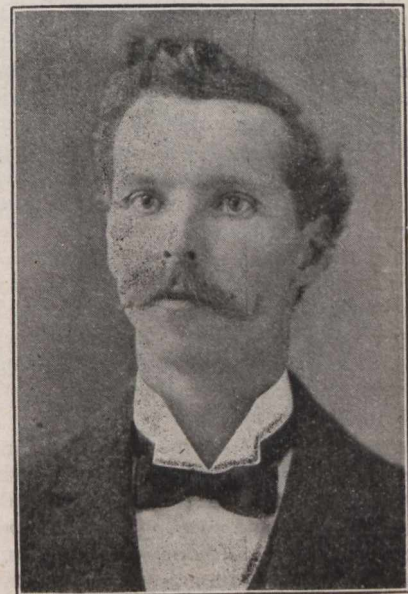
Clerk, Town of Deseronto.

Mr. Irvine was born in the township of



MR. J. W. GOULD.

Toronto, in the year 1855, and was educated in the public schools of that township and the Streetsville high school. For the past twenty-three years he has been a resident of Deseronto, and was appointed clerk in 1883. He was formerly engaged in the business of stair-



MR. ROBERT N. IRVINE.

building, but, owing to ill-health, gave it up, and embarked in the grocery business some twelve years ago.

# Engineering Department

A. W. CAMPBELL,  
O.L.S., C.E., M.C.S., C.E.

## Rural Mail Delivery and Road Improvement.

The following extracts from the address of the Hon. A. W. Machen, General Superintendent, Free Delivery System, Post Office Department of the United States, delivered at the Buffalo Roads Congress in September last, are indicative of the value of good roads in one matter alone. A rural mail delivery is not the only benefit of which bad roads are depriving us. Mr. Machen said:

No other branch of our great postal system is as far-reaching in its effect as the rural free delivery service. It means the extension of the post-office to the doors of the people. The rural letter-carrier is, in fact, a travelling post-office, performing practically all the functions of a postmaster. Besides delivering and collecting ordinary mail, he delivers registered letters, registers letters, sells stamps and stamped envelopes, cancels the stamps on the letters he collects, and receives money en route for the purchase of money orders. He is an anticipated and welcomed visitor to the country home, and becomes a fixture in farm life.

It is no wonder, then, that the people want a service of this kind, and that the demand for it has become more and more urgent until to-day it is practically universal, and not to be resisted. The people are determined to have it, and after receiving it are bound that it shall be efficient and satisfactory. This it cannot be unless the roads over which it is operated are in good condition. Good roads are indispensable to really efficient rural service. It is essential that the service be performed with regularity and punctuality. It must be a daily service, and the patron must be reasonably sure that the carrier will pass the gate at about the same time every day. A well-built and well-kept road will permit of such a service; over bad roads it cannot be maintained. Even though a carrier is able to cover his route over bad roads, the time consumed is often from one to three hours in excess of what it should be were the highway in proper condition. A good rural service, then, means good roads, and as the people insist upon the former, they must eventually obtain the latter.

It should, therefore, be apparent to anyone who gives the subject careful consideration that the good roads propaganda, which started some years ago with the progressive people of our country, must receive a powerful impetus from the establishment of this new and popular service.

It may be said that the only obstacle now encountered in the extension of rural free delivery is the unimproved condition of our country roads. In many sections of this country the roads are what are

called dirt or mud roads. They are narrow and tortuous, and the only work done on them is practically confined to going over them with a road machine or scraper once a year. The principal effect of this work is to pile up in the middle of the road all the muck and rubbish which has accumulated on the sides during the rest of the year, so that in wet weather, unless the soil is very sandy, the whole surface becomes rutted, and is soon converted into a series of mud-holes. This is particularly the case in most of the farming sections of the middle west, and to a large extent in the south; also as far east as western New York and Pennsylvania.

The department soon became convinced that steps should be taken to remedy these conditions if a desirable rural service was to be provided. When it was demonstrated that the rural free delivery service would become a permanent feature of the postal service of the United States, the Post Office Department promptly laid down as one of the requirements for the establishment of rural free delivery that the petitioners for the same must agree to place the roads to be traversed by the proposed service in a passable condition, and keep them in repair throughout the year. Petitions including the agreement that the department's requirements will be met are promptly referred to special agents for investigation. A special agent drives over the highways of a proposed route, and is required by the regulations to make a special report on their condition. In many instances special agents find themselves obliged to exact a pledge from road supervisors or other officials having charge of the building and maintenance of public highways that the roads will be improved before the service is established, and kept in proper condition after the same has been put in operation. In Iowa alone over one hundred agreements have been entered into between county commissioners and special agents of the rural free delivery service to open, repair and maintain roads.

This plan is producing very good results. Reports come from all sections of the country to the effect that, prompted by a strong desire to obtain free rural delivery, the people are not only insisting on the improvement of roads in advance of the service, but that creeks have been bridged, in many instances by substantial stone bridges, for the special accommodation of the rural letter-carriers.

Now that I have shown what the department is doing to bring about an improvement of the public highways in advance of the establishment of rural free delivery, I will briefly explain the efforts it is putting forth to effect a betterment of the roads where the service has been in operation for some time, and where failure in the

past to maintain daily trips on account of the poor or impassible condition of the roads during certain seasons of the year, has brought forcibly to the attention of the department the absolute necessity of repairing these roads to insure a continuance of the rural free delivery service. After routes have been established and in operation for some time, route inspectors have been sent out at regular intervals to make a general investigation of the rural system. Among other points on which they report are the quality and condition of the highways traversed. These inspectors are required to specify definitely such portions of the highways travelled by rural carriers as are impassible, and to give the names and addresses of the road supervisors, or others in authority, who are responsible for their repair and maintenance. In addition to this information the department has gathered data from more than 2,400 of the rural free delivery post-offices bearing upon the condition of the public roads.

This information has been received in answer to the following questions:

What is the condition of the roads travelled by the rural carrier?

Were the roads impassible at any time during the past winter?

If so, for how many days, and for what cause?

Are the roads being properly repaired this year?

If any roads need attention, give name and address of road supervisor or other official.

It is the intention of the department to continue on these lines, and by every possible means to point out to the people that a prompt and regular service can be provided only where good roads are maintained. Postmasters are requested to report from time to time on the condition of the roads, and in that way the department will be kept continually and intelligently in touch with existing conditions. The need for this work may be more clearly shown, and the effect of it on the highways of the entire country may be better understood and appreciated by considering a few figures relative to the rural free service as it exists to-day.

The total number of carriers employed in the rural free delivery service at present is about 5,700; total population served by them daily about 3,500,000; total number of miles travelled each day, about 140,000.

When one considers that no two carriers (with few exceptions,) travel over the same roads, it becomes clear that if the department succeeds in its efforts for good roads on the routes now travelled by the 5,700 carriers, there will be 140,000 miles of good roads in the country districts now enjoying the benefits of rural delivery. At the present rate of increase, the rural service will be practically doubled within the next twelve months, and as it is the

distinct policy of the department to extend the service and keep pace with the demand for it (which is constantly increasing,) we may look forward to the time when all sections of the country in which this service may be feasibly maintained will be covered by a network of rural routes.

Wherever there is a systematic extension of the service throughout a whole county it is found that fully nine-tenths of the public highways are covered by rural free delivery. If, therefore, reliable statistics were at hand showing the total number of miles of public roads in rural districts of the United States, an interesting estimate might be made showing the total number of miles of the United States that will eventually be covered by rural free delivery service, and consequently become good roads. All, I think, will agree that the rural free delivery is proving a potent factor in the construction of good highways and proper maintenance. It is obvious, too, that the people, by insisting upon a universal extension of the service, have in their hands the most effective means possible for bringing about the general improvement of nine-tenths of the public highways of this country. This has been the object for which good roads commissions and other kindred organizations have been working for years, and a propaganda is still being vigorously carried forward not only by these organizations, but by the government itself, through the efficient management of the office of Public Roads Inquiries of the Department of Agriculture.

While it is true that the good roads movement has received a great impetus, and made rapid strides during the past few years, on account of the very efficient support it has received from the Department of Agriculture through the publication of literature on road building, securing the construction of object lesson roads, etc., I think all will concede that the Post Office Department is not overstepping the bounds of modesty when it claims that the solution of the whole question lies largely in the rapid and systematic extension of the rural free delivery service.

#### County Roads.

In seeking to take advantage of the million dollar grant the preliminary step taken by county councils has been to hold a conference of all municipal councillors, or representatives of councils, within the county. At these conferences, the majority of which have been attended by the Commissioner of Highways, the meaning and intention of the Act has been discussed, and to some extent a plan of roads considered.

It then rests with the county council to pass a by-law definitely laying down a system of county roads. A copy of this is sent to each township council within the county, and they have three months in which to consider the by-law. Each council will, within the three months,

report to the county council their acceptance of the plan, their rejection of it as a whole, or such alterations in the system of roads as would meet their approval. If a township wishes roads taken other than those proposed by the county, in case of failure to agree, the matter will be submitted to arbitration. If more than a third of the municipalities oppose the by-law as a whole, the question must be submitted to a vote of the people. If the by-law meets the acceptance of the municipal councils, or two-thirds of them, the county council may, at the end of three months, proceed to perfect their plans for the improvement of the roads.

The aim of the Act is not so much to oblige the building of an expensive system of complete roads as it is to secure uniform and systematic work, employ and properly operate modern and economical implements, and provide careful, constant and methodical supervision in maintenance; to provide object lessons in the care and treatment of roads, and set examples for those having charge of the remainder.

The Act as it stands has the alternative plan, whereby townships may individually carry on the work, but it is urged that the best results can be accomplished by a county council, they would have charge of these particular roads only, would have sufficient work for, and would naturally employ a competent man to supervise and care for them.

Whereas, under township control, the township council having charge of all the other roads in the township, as well as these special roads, will be influenced, after the first expenditure, to make future municipal expenditures on other roads, and those which have received government aid will be neglected. While other roads in a township remained unimproved, many councils, after once improving a road under this Act, owing to local jealousies, would find it impossible to make a sufficient yearly expenditure to properly maintain it, and, under such circumstances, the first outlay would be little better than wasted. There are other reasons, familiar to most experienced councillors, why the principal roads, those subjected to extremely heavy travel, can be better and more economically maintained by the one larger body in the county, rather than by the half dozen separate townships working independently of one another.

It cannot be doubted that the county councils, constituted as they are now, will take a deep and intelligent interest in this work and will strive to create such a distinction between their roads and those under township management as to stimulate a friendly rivalry which must naturally do much in the interest of improved highways and economical management.

One chief object in recommending that certain roads be cared for by the county council is to obtain from the towns and villages in the county a fair share of assist-

ance in keeping up the leading roads. There can be no question as to the justice of requiring the towns and villages to contribute towards the cost of this work. Towns and villages are benefited by the improvement of roads, and the county should not hesitate to assess them. This can be done through the county council only. It is not the intention that any of the money should be spent in the towns, but that all should be spent in the townships. Where the county has to raise two-thirds of the total amount, such a percentage of this will be contributed by the towns as to make their contribution, added to the government grant, equal to one-half the cost of the work. Where the townships instead of the county take advantage of the Act, towns and villages cannot contribute in this way. Under a county system a portion of road building is levied, in the county rate, against the towns and villages within the municipality for road purposes. At the present time, under township system, farmers bear the entire cost.

All the expenditure placed on roads would be spent in the county, and thus returned in a great measure, to those who contributed it in the first place, together with the provincial grant.

Under county control a properly organized corps of men can be employed to build and repair the roads. As at other employments, they become experienced and do better work, and in the matter of repairs are ready to make them as soon as signs of wear appear.

By a county plan, uniformity of work and system will be secured throughout the various municipalities. Under township control, a diversity of plans is certain to be adopted.

In a county plan, an experienced and properly qualified man could be employed to have constant supervision of the work, whereas, under township control, each municipality cannot afford to pay the salary of such a man. Under every good system it is necessary to have responsibility centralized and defined, not divided and easily shifted from one to another, as it now is under the statute labor system.

Under county control modern machinery, too expensive for individual townships, can be purchased and handled to advantage. An experienced operator can be employed for each implement, and a better and more uniform class of work will be secured.

A township can manage its roads properly only by adopting a plan similar to that outlined under a county system, but by extending it over a county it becomes more cheaply operated.

It is urged that while there may be some feeling adverse to townships parting with the control of any of their roads, it is nevertheless impossible, under a township organization, in the case of heavily travelled roads, to levy the necessary taxation equitably, or employ the most economical and at the same time serviceable system. The trend of opinion

has turned towards collecting the most important roads of each county, and placing them under the management of the county council. It has been shown that, by such means, roadmaking can be placed on a more business-like basis, and consequently greater efficiency is secured. It provides for a more equitable system of levying the cost, for a better use of modern machinery, and for a higher grade of oversight and workmanship. At the present time township councils are unable to maintain the roads by statute labor, and are, in consequence, compelled to make annual appropriations of money from the general tax. This money is, in the main, spent on the roads which would comprise a county system, but owing to the contracted character of the system, township councils cannot expect to apply this expenditure to the greatest advantage.

A greater cost to the individual citizen need not be feared as no greater road mileage is to be maintained. The effect of a county system is merely to group the most heavily travelled roads under one management, where they can be most economically maintained.

#### The Township System Outlined.

The chief points in the system of road management in townships where improved methods have been adopted include the following:

Statute labor is commuted at a fixed rate per day, and the amount is collected at the same time as the other taxes, by the township tax collector.

The township, if desired, is divided into a convenient number of road divisions for road purposes, usually two, three or four, and a road commissioner is appointed over each.

The duties of the road commissioner are:

(a) To supervise all work and repairs done on the roads and bridges within his division.

(b) To acquaint himself with the best methods of constructing and maintaining good roads, and of operating graders and other road machinery used by the township.

(c) To employ, direct and discharge all men and teams required to carry on the work and to purchase necessary materials.

(d) To see that all washouts, drain and culvert obstructions, bridge failures, and other unforeseen defects are repaired or protected, with the least possible delay, so as to prevent further injury to the road or accident to the users of the road, and to otherwise act promptly in all cases of emergency.

(e) To report to the council early in each year as to the work required the coming season, and to carry out the instructions of the council, with regard thereto, and to perform such other services as may be required of him, from time to time, under the written instructions of the council.

(f) To collect the poll-tax in his division.

(g) To keep an accurate record of the men employed, and the work done, and to furnish this written form to the reeve at proper intervals, in order that the reeve, upon being satisfied of the correctness of the statement, may issue cheques for payment thereof.

(h) To stake out all works and see that they are undertaken systematically, so that no time will be lost in taking men, teams and machinery from one part of the township to another.

The usual road appropriation is made from the general funds of the township, this to be applied to the purchase of tools, machinery and materials, or to small jobs and contracts.

The residents of the township are employed to do the work, provided they come properly equipped, and will do a fair amount of work.

Work is paid in cash, if desired, but preferably by cheque; payment to be made in accordance with the pay-roll submitted by the road commissioner or overseer, accompanied by necessary vouchers, and such information as may be considered necessary.

A general plan for road improvement should be laid down by the council for the commissioner to follow.

This plan should specify the width to be graded, width and depth of road metal, character of drainage, etc., of all roads.

Roads of importance should not be less than twenty-four feet between the inside edges of the open ditches. No road should be of less width than eighteen feet.

All roadmaking machines should be in the care of the road commissioner.

The same man and teams should be hired to operate the machinery for the entire season, as they become proficient and do better work. This applies particularly to the operation of a road grader.

The council appoints foremen in different parts of the township to collect the necessary labor, and act promptly when roads are blocked with snow; the men employed to be paid in cash by the council.

#### Traction Engine Trains.

A novel method for improving the system of transportation in the new settlements of Northern Ontario is being considered by the provincial department of highways. It is the establishment of traction engine trains between distant points in newly settled communities and the railway or lake connections. The intention is to place the leading roads in fairly good condition, serviceable for ordinary traffic, and instead of the stage-coach lines of earlier days, comfortable vans for passenger and freight traffic will be hauled by traction engines. Where the roads have been built with this object in view, the grades and surface condition will naturally be better than for the ordin-

ary colonization roads, and being completed between the distant points, will, it is thought, be a sufficient inducement to private parties to provide and operate the trains. The traction engines now being built, of high speed and power, for road work would be much more serviceable than horse power. With the exception of a short time during the spring and fall, they would be capable of running on schedule time.

#### The Road Roller.

The advantages to be derived from a roller in the construction of a broken stone road are becoming more and more appreciated. Unless a roller is used the stone must be spread loosely on the road and left for traffic to consolidate. A road should be made for traffic, not by it. To leave loose gravel and stone in the roadway is neither an agreeable method of constructing a road, nor will it produce the most durable road.

The consolidation of loosely spread stone or gravel by traffic is a slow process, causing much inconvenience to travel, during which the earth of the subsoil becomes mixed with the stone. Earth intermixed with stone prevents the strong mechanical bond which clean metal will assume when the stones are wedged one against the other by a roller. The particles of earth, when wet, have a lubricating influence on the stone, and under the action of wheels the surface is more readily broken up. By the use of a roller the earth subsoil should be first thoroughly consolidated. The stone should be placed on this foundation in layers, and each layer well compacted. In this way a smooth, durable, waterproof coating of stone, free from earthy material, can be laid over a firm foundation.

There are different classes of rollers. The horse roller, weighing six or eight tons, will do fairly well if a steam roller cannot be afforded, but the horse roller is not sufficiently heavy for the best results. It has to be used much longer than the steam roller. The feet of the horses, in exerting sufficient strength to move the roller, sink into and disturb the road metal, and injure the shape and quality of the roadway, while on hills it is at a disadvantage.

The steam rollers are of various weights, ranging from eight to twenty tons. Rollers of fifteen tons weight are those generally used by the towns and cities of Ontario. The cost of horse rollers is usually about \$90 per ton, or from \$500 to \$800 each. Horse rollers are, however, generally so constructed that the weight may be increased by iron castings; so that a roller of five tons may be made to weigh about six. Steam rollers cost about \$3,000. For operation a horse roller with two teams will cost \$6.00 per day. A steam roller will cost \$10.00 per day, but will do three times the amount of work done by a horse roller, so that the saving in operation is considerable.

## Road Drainage.

That the question of road improvement has not received the attention it should is most clearly demonstrated by the fact that every person who has given thought to the matter is at once convinced and freely acknowledges that the matter of perfect drainage is the basis of good roadmaking. An evidence of how much we know about the important question, and how little of this knowledge we put into operation, is most strikingly shown by the fact that drainage is so often ignored. We have certainly been giving too much attention to surface indications. Our system has encouraged us to make as large a showing as possible with a limited expenditure, and consequently it has been our aim to temporarily improve the surface. The time was when some excuse could be given for this sort of thing, but no longer should we practise this false economy. Let us get at the seat of the trouble, where trouble exists, and instead of trying to plaster over a springy hill, or a boggy, low, wet spot, let us drain the foundation. Take away the surface water. Provide proper outlets, if necessary through adjoining land. Crown the road to shed the water into the side ditches. This gives a dry earth road upon which may, later, be placed gravel or stone, and thus provide a perfect roadway.

It is not the average condition of a road that makes it what we term "bad." But rather, the many or the few bad spots in a long stretch of road. It is these bad places that should command our first attention. The most of the expenditure should be made on the bad stretches, first taking the worst. Each year these worst places would be made better, each year's work should reduce the number, until in a short time the whole road would be made fairly good and ready for gravelling.

In travelling the country, it is surprising to find the work that is being done on the higher and better parts of the roads, making them still better; while the lower parts, which are the worst, are neglected and allowed to grow worse. A further evidence of the error which is being made is so much attention given to the high sections, for which there is often no occasion, and little attention to the low sections, which should naturally and reasonably demand the greatest outlay.

Often the whole beat is made up of a section of road, high and dry, over gravelly soil, with a gravel pit in the centre of it. This beat is kept up, but often the road is made worse than otherwise it would be, by the annual expenditure of practically unnecessary work. At one or both ends of this beat there may be a slough, swamp, or a long stretch of bad soil, through which the people from both beats must constantly pass. More expenditure than is required is made on the upper beat, while less than is needed is made on the lower. In such cases united action should be concentrated upon the worst pieces ensuring gradually better results.

## The Road Surface.

A road surface of gravel or broken stone performs various services. The subsoil of clay or loam alone ruts readily, softens quickly after a rain, and has little supporting power. A well-compacted layer of gravel or broken stone over it, distributes the concentrated wheel load over a greater area of subsoil; it does not rut readily, and affords good surface drainage; it gives a smooth, hard wearing surface; water does not easily penetrate it so as to soften and reduce the supporting power of the subsoil.

The depth of gravel or stone to be used must vary with the quality of the material, the amount and nature of traffic on the road, and the nature of the subsoil. A dry, compact and stony subsoil, needs less metal than does a plastic clay, difficult of drainage. No definite rule can be laid down other than that from six to twelve inches of well consolidated material will afford a sufficient range to accommodate most circumstances. Under ordinary conditions, ten or twelve inches of metal should accommodate the heaviest traffic to which a gravel or broken stone roadway can be economically subjected.

A very notable defect of most country roads is the flat or even concave surface. Others present the opposite extreme, and are so rounded up as to be dangerously high in the centre, making it difficult for vehicles to turn out in passing. Roads must be crowned sufficiently to shed water from the centre to the open drains at the side, otherwise water will stand in the roadway, soak into it, soften and cause rapid wear and decay; but a crown higher than is necessary to properly drain the surface is also objectionable.

The amount of crown should not be more than sufficient to provide for surface drainage. A steeper crown than is necessary tends to confine the traffic to the centre of the road, and in turning out the weight of the load is thrown on one pair of wheels in such a way as to rut the side of the road. The shape of the crown is a matter on which expert roadmakers differ, but with the class of material available for roads in Ontario, and the methods and plans of construction, a form as nearly circular as possible will be found most serviceable, and easily obtained.

From the edge of the open drain the graded portion of the roadway should be crowned with a circular rise of one inch to the foot from side to centre. That is, a drive-way twenty four feet wide should be a foot higher at the centre than at the side. This amount of crown may appear excessive, but with gravel roads and roads metalled with the quality of stone commonly available, is not more than sufficient to provide for the wear and settlement consistent with good surface drainage.

The elevation of the road above the level of the adjacent land need not be greater than is sufficient to provide against the overflow of storm water, which should

always be guarded against. The depth of the drain must vary according to the amount of fall and the quantity of water to be provided for; also to the sub-drainage needed and provided. When tile sub-drains are used the open drain can often be very shallow; in which case the width of the graded roadway can be narrowed, there being no danger of accidents such as are caused by a deep trench at the roadside. The tile drains should be placed below severe frost, and usually a depth of three feet will answer.

A degree of moisture is necessary in the summer season in keeping sand roads or roads over sandy ground in their best condition. One of the most lasting and beneficial improvements to sand roads is the planting rows of trees on each side of the road, and close together to provide continuous shade. They will prevent, in part, the drying effect of the winds, as well as intercept the rays of the sun. For this purpose the white elm, with its arching branches, is most serviceable, and will add much to the appearance of the country.

## Concrete Culverts.

The Roads Department is being besieged with questions relating to the use of cement in culverts and bridges. It is surprising how slowly some municipalities provide for keeping pace with constantly changing conditions. It is surely apparent to the older counties that timber for all such works is becoming scarce and expensive, that we cannot afford to use this material as we did ten years ago, and that something must be provided for taking its place.

Some townships have been using sewer pipe and cement pipe for the last twenty years, while other townships, where the necessity for such economy is greater, are still using timber. The price of timber has gradually increased until few of us stop to consider what timber culverts, at the present market prices, are costing; and some of us do not take the trouble to inquire what the culverts would cost if built of durable material. But an example of the economy of concrete is to be seen in the towns of Northern Ontario, in the very heart of the lumbering sections, where concrete is now being used, instead of timber. Timber is too expensive for culverts. No township can afford it. Nothing can illustrate more clearly the carelessness of a council than to find them still using expensive lumber instead of concrete.

The best sewers and the best telephone service is claimed by Dawson.

\* \* \*

A central heating plant for heating all the municipal offices and buildings is proposed in Lindsay.

## Question Drawer.

Subscribers are entitled to answers to all Questions submitted, if they pertain to Municipal Matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions, to insure insertion in the following issue of paper, should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamp addressed envelope. All Questions answered will be published unless \$1 is enclosed with request for private reply.

Duties of Clerk as to Separate School Supporters.

**230—TOWNSHIP CLERK.**—A Roman Catholic Separate School has been established in a municipality adjoining ours. Twenty-three R. C. ratepayers of our township wish to become supporters of said school and to be exempted from public school rates. To enjoy that privilege you are aware they must make a declaration as required by section 42 Separate Schools Act and file same with the clerk of municipality on or before March 1st. Now these ratepayers made the required declaration and entrusted Rev. Mr. C. to file it with me, who instead of delivering it personally at my office, registered it to my address, taking a certificate of registration from his postmaster, dated February 28th, 1902, and according to postmark on envelope it arrived at my post-office on same date but it did not reach me until March 18th, although I had been in the office several times while it was there.

1. What position shall I, as clerk, take, that I may do justice in a legal sense to all concerned?

2. Some of the ratepayers live further than three miles in a direct line from the school. Is it my duty to take no notice of that fact but just place them on the separate school list and leave that point to be fought out by those interested?

1. Subsection 1 of section 42 of the Separate School Act provides that "every person paying rates, whether as owner or tenant, who, by himself or *his agent*, gives to the clerk of the municipality *notice in writing* that he is a Roman Catholic, etc., shall be exempted, etc." There is no provision made for sending this notice to the clerk *through the post office*, and, as it did not reach you on or before the first of March, we are of the opinion that the notice was insufficient. You should, therefore, take no action at all.

2. If ratepayers voluntarily give the notice mentioned in subsection 2 of section 42, and are willing to contribute toward the support of a separate school, located more than three miles from their respective places of residence, there is nothing in the Act to prevent their so doing. Section 43 does not affect such a case as this, and it is no concern of the clerk's as to whether the persons giving the notice reside within the three mile limit or not, but as the notice was insufficient you will not be concerned about the point.

### Compulsory Vaccination.

**231—J. M. D.**—In the event of a small-pox case in a municipality, has the local board of health power to and must they enforce compulsory vaccination in the municipality?

It is not the duty of the local board of health to enforce vaccination. Section 15 of chapter 249, R. S. O., 1897, provides that the COUNCIL of any municipality, where small pox exists, MAY order the

vaccination or re-vaccination of all persons resident in the municipality, etc.

### Duties of Town Treasurer and Collector.

**232—E. D.—1.** According to section 295, chapter 223, R. S. O., 1897, a municipal treasurer cannot be a collector. Does that prevent a treasurer receiving taxes at his office or does it prevent him from calling on persons in arrear and demanding payment? Or can a treasurer, where no collector has been appointed—taxes being payable at treasurer's office—collect taxes in arrear by distress? If not, what would be the proper course to pursue?

2. Can a treasurer, in any sense, when taxes are payable at his office, be considered a collector? If so, would his sureties be liable for any act done by him which might be construed to mean that he was acting as collector and not as treasurer if the bonds did not specify liability for acts other than that of treasurer?

1. If the council has passed a by-law pursuant to the provisions of section 60 of the Assessment Act (as enacted by section 4 of the Assessment Amendment Act, 1899), the treasurer will have authority thereunder to RECEIVE payment of taxes, and it will be his duty to do so. The treasurer has nothing to do with calling on persons in default and demanding payment of their taxes. This is the duty of the collector. No provision is made for the collection of taxes from parties in default by distress by the treasurer. A collector should be appointed by the council of the municipality to do this work. The only instance in which a town treasurer is authorized to distrain for taxes in arrears is that mentioned in section 171 of the Act. See also section 224.

2. A treasurer cannot in any sense be considered a collector of a municipality so far as the official capacity of the latter and the discharge of his duties are concerned. The sureties of the treasurer are responsible for the proper and faithful performance of such duties as the statute requires him to perform as TREASURER only.

### "Herding" of Cattle on Highway.

**233—J. H. W.**—We have just passed a by-law prohibiting cattle or other animals from running at large or being herded on the public highway, before the 24th of May or after the 1st of October. What is the law regarding cattle being herded? Can parties owning land along the public highway prevent herders from herding cattle in front of their land or have they the right to herd any place as long as they are doing no damage?

Subsection 2, of section 546, of the Municipal Act, authorizes the council of every township, etc., to pass by-laws for restraining and regulating the *running at*

*large and trespassing*, etc." of animals. No authority is given to such councils to preclude these animals from being on the highway, when being driven from place to place or being "herded" as you term it, under the charge of some person or persons, any portion of the by-law which relates to cattle *not running at large* on the highway, or trespassing, is beyond the power of the council to enact and cannot therefore be enforced.

### Opening of Road in Unincorporated Village.

**234—T. C.** What is the legal way or proceeding for a township council to open a new road in an unincorporated village?

The council should pass a by-law pursuant to section 637, of the Municipal Act, after the preliminary proceedings, prescribed by section 632 of the Act, have been strictly followed and observed. If lands have to be expropriated in opening and establishing the road, compensation must be made to the owners of the lands taken, pursuant to section 437 of the Act.

### Assessment of Personality When Owner Does Business in Two Municipalities.

**235—SUBSCRIBER.**—A resides, owns property and has business interests on one side of township dividing townships; also owns property and has business interests with office, keeping notes, etc., on other side of townline.

1. Which township has the legal right to assess him for income?

2. Are notes assessable for face value or the income derived from them?

1. Subsection 2 of section 41, of the Assessment Act, provides, that "if a person has two or more such places of business (as those mentioned in subsection 1) in different municipalities (or wards) he shall be assessed at each for that portion of his personal property connected with the business carried on thereat; or, if this cannot be done, he shall be assessed for part of his personal property at one place of business and for part at another; but he shall, in all such cases, produce a certificate at each place of business of the amount of personal property assessed against him elsewhere." By subsection 10 of section 2 of the Act the words "personal property" are made to include "income." This person appears to have places of business or business interests in both municipalities, therefore the income assessment should be divided between them in accordance with the provisions of subsection 2 of section 41.

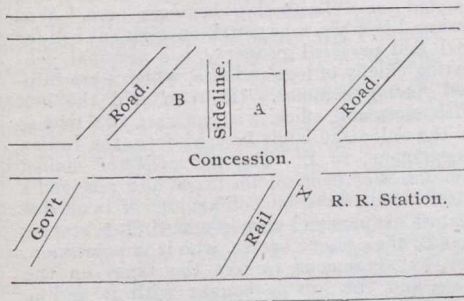
2. Notes are personal property and are assessable to the owner as such at their ACTUAL VALUE. See subsection 10 of section 2.

### Closing Road—Appointment of Non-Resident Postmaster.

**236—SUBSCRIBER.**—In the enclosed draft the roads are marked. Lot marked "A" belongs to Agricultural Society. Lot marked "B" belongs to a merchant. Each lot contains about an acre. Lot B has frontage on concession also on government road. Sideline is not used for travel, government road takes its place. Sideline is not opened north of government road nor south of concession.



1. Has township council power to close side-line and rent or sell it?
2. Is it lawful for council to appoint a path-master owning property in township but living across townline in the next township?



1. Section 637, of the Municipal Act, authorizes the councils of townships to close, rent, or sell roads in the municipality, but, before doing so, the preliminary proceedings prescribed by section 632 must first be strictly observed and carried out. In closing this road the council should also consider subsection 11 of section 640, sections 629, 641 and 642.

2. Yes.

Payment of Damages to Owners of Thoroughbred Sheep.

237—R. M. T.—There has been several pure bred sheep killed in our township and though they are not valued more than they are worth, the valuation was very high. One ram valued at \$25.00 and three ewes valued at \$18.00 each.

1. Are we enforced to pay two-thirds of the valuation of pure-bred animals?

2. If not, what is the price set for rams and ewes?

1. Yes, assuming that the council has not passed a by-law pursuant to section 2 or section 8 of chapter 271, R. S. O., 1897.

2. The sum to be paid by the municipality for sheep killed or injured by dogs is not fixed by the statutes. Section 18 provides that on furnishing the proof required by this section the aggrieved party shall be awarded for compensation a sum not exceeding two-thirds of the amount of the damage sustained by him. The "damage sustained," if sheep are killed, is the value of the sheep as proved to the satisfaction of the council whether it be \$5 or \$25.

Payment of Damages to Owners of Thoroughbred Sheep.

238—R. W.—Our council at its first meeting appoint sheep valuers, whose duty is to value sheep killed and otherwise damaged by dogs, of which value our council has been paying two-thirds. From four to eight dollars has been the regular prices in the past but lately they have been asked to pay in some cases from 18 to 25 dollars for sheep. The owner claims they are registered sheep and cost or are worth that money to him and has convinced the valuator of the same. What I want to know is "are municipal councils obliged to pay these fancy prices?"

The statutes do not definitely fix the sum to be paid by a municipal council for sheep killed or injured by dogs. Section 18 of chapter 271, R. S. O., 1897, provides, that on furnishing the proof required by this section the party aggrieved shall be awarded, by way of compensation, a

sum not exceeding two-thirds of the amount of the damage sustained by him. See also our answer to question No. 237 in this issue.

School Rates in Townships Should be Paid on or Before 15th December Yearly

239—J. C.—Can municipal council of township hold back rates due school sections until taxes from which such rates are payable are collected during the following year?

Under subsection 6 of section 65 of the Public Schools Act, 1901, it is the duty of the trustees of a public school to submit to the municipal council on or before the 1st day of August, or at such time as may be required by the municipal council, an estimate of the expenses of the school under their charge for the current year. Subsection 1 of section 71 requires the municipal council to levy and collect this amount upon the taxable property of the school section and, yours being a rural school, to pay this sum to the secretary-treasurer on or before the 15th of December of the year in which it has been levied. The council has no authority to hold back moneys beyond this date. The trustees can compel its payment then, and, if the council has not the money on hand to meet the payment, it should borrow it. See section 223 of the Assessment Act.

A Line Fence Agreement.

240—J. C. G.—M has kept up the south half of the line fence between his farm and that of his neighbor G. Recently G sold off 25 acres lying along M's portion of the line fence to W and then M and W made a new division of the fence along the 25 acres, each agreeing to keep up half of it. (There are no buildings on the south half of either lot). Now W proposes to remove his half, which is rails, and to replace it with a stump fence. M doesn't like to see these rails (which he put there) appropriated by W; but W contends that so soon as he and M made the division, it was within the right of either to remove his allotted half, provided he promptly replaced it with a fence that was in accord with the township by-law regulating the height and description of lawful fences. Is W right?

The agreement between M and W being verbal, is not an agreement within the meaning of section 14 of the Line Fences Act, and is therefore not enforceable under that Act. In any event W has no right to move what he claims to be his portion of the line fence between him and M, until he has given the latter six months' notice of his intention so to do. See clause (a) of subsection 1 of section 15 of the Line Fences Act.

Collection of Water Rates by Frontage Tax.

241—T. G. W.—I have to thank you for your favor on the subject of frontage tax for waterworks. Section 687 of R. S. O., chapter 223 gives this power to townships and villages, but towns do not appear to have such power except as regards petitioners. See R. S. O., chapter 235, section 48. If my view of this is incorrect, I shall be glad to hear further from you.

Section 687, of chapter 223 of the Municipal Act, does not apply to a town and therefore it does not help you. We

cannot see what application section 48 of chapter 235 has to the question at all.

Qualification at Time of Election Sufficient.

242—J. H.—Two of our councillors (since the election) have sold their property and do not now own sufficient property in the municipality to qualify them. Another councillor lost his property through fire. Are these councillors eligible to hold their positions until January 1st, 1903?

Yes, if these parties possessed the qualification required by section 76 of the Municipal Act "at the time of the election," that is from nomination to polling days, both days inclusive, or if they did not then possess such qualification, and no proceedings were taken against them to unseat them within the time prescribed by the Act, they cannot now be compelled to vacate their seats.

Statute Labor in Villages.

243—MUSKOKA.—Kindly give me the sections in the act that provide for the commuting of all statute labor by the council of an incorporated village. I have been referred to sections 97 and 98 of Assessment Act but I do not think they cover the ground, nor do sections 561 chapter 223, or 103, chapter 224, seem to apply to villages.

Section 561 of the Municipal Act and section 103 of the Assessment Act apply to townships only. Sections 97 and 98 of the latter Act apply only to the persons therein mentioned who have not been assessed on the assessment roll of the city, town or village, or whose taxes do not amount to \$2.00. There is no legal authority for charging any statute labor against lands in an incorporated village, nor, as a consequence, is there any provision for commuting the same.

Township Not Liable.

244—J. O.—A man driving a team of horses in a sleigh, on which was a light load, got his horses down in the snow and had one of them so badly injured that it died six days afterward. The place where the accident occurred was about midway on a hill about forty rods long with a grade of about one foot in ten. The hill is cut down about fifteen feet. The cut was filled with snow by a storm in January. The pathmaster had it cleaned out, the snow carted away and the road tracked with a team and a sleigh. There were no complaints made about the highway, which is one of the leading roads of the township. The accident occurred during the spring thaw. The complainant was driving up the hill, the near horse sank into the roadway and shoved the off-horse into the soft snow at the side of the track. Neither of the horses fell down but in striving to get out of the soft snow the off-horse got injured as above stated. The snow was about three feet deep where the accident occurred. The complainant knew the condition of the hill as he lives near by. He has notified the council, through his solicitors, that he wants full value for the animal. Is the township liable for damages?

We are of the opinion that, under the circumstances stated, the township is not liable in damages to the owner of the horse. Notice of action must be given in the manner mentioned in section 606, of the Municipal Act, within thirty days after the happening of the accident, and the action must be commenced within three months after the damage was sus-

tained. This notice may have been given in time but we thought that we should draw your attention to the fact that such notice is necessary.

#### Liability for Necessaries to Persons Quarantined.

**245.**—D. C. M.—Our council are having a few smallpox bills presented to them for payment, and these bills are not for necessaries, but luxuries for the sick, as they appear to have lived on top of the pile. They have asked me to write you for advice as to the payment of these accounts. My impression is that s. 93, of chap. 248, of the R. S. O., covers the whole matter. It would appear that one of the families that were quarantined, although in a sense able to pay, requires time to do so, which is not satisfactory to the merchants who supplied them, and they want council to pay, and threaten suit to recover if they do not pay. The council would pay the bills if they thought they could be collected, and want to know if the amount paid by them could be entered on the collector's roll against the parties. I tell them I think not, as the law provides that all complaints have to be brought before Justices of the Peace.

In no instance is a local board of health in the municipality, or the council, liable for cost of luxuries furnished to parties quarantined and they should not pay any account for such. Nor are they, or either of them, liable for the cost of providing nurses and other assistance and necessaries for such parties, unless they, or other persons liable for their support, are unable to pay the amount. The council has no authority to constitute itself a collecting agent for merchants in the municipality, because parties indebted to the latter are slow in making their payments.

#### An Early Closing By Law.

**246.**—ENQUIRER.—Last year our council passed an early closing by-law, having been presented with a petition to pass such by-law, signed by all the merchants in the village except three. Two of these were Jews, and the third a hardware merchant. There are three hardware stores in the village, handling hardware and tinware exclusively, and one general store, handling hardware in the way of harvest tools, axes, saws, files, nails, tar and felt paper, and other staple lines and oil. Now the hardware merchant who did not sign the petition refuses to close his store, claiming that the petition must be signed by three-fourths of the merchants in that line, but that it is only signed by two-thirds of them, the general store not being considered as a hardware store.

1. Does the general store figure the same as the hardware stores in the petition with reference to that line of business?

2. Can the hardware merchant who did not sign the petition be compelled to close his store the same as the rest under the by-law? The petition was signed by the merchants in a general way, no reference being made to any particular line. Even our drug stores close.

1. Subsection (2) of section 44 of chap. 257, R. S. O., 1897, empowers a council to pass a by-law requiring all classes of shops or any class of shops to be closed during certain hours, and subsection (3) of the same section makes it imperative on the council to pass a by-law within a certain time if a proper petition is presented. The council in this case, having passed a by-law, we cannot see what ground the hardware merchant has to complain because the council might have passed the by-law without any petition.

In regard to the general store, if the by-law is confined to hardware stores, the owner of the general store is not affected by the by-law. Not having the by-law before us we cannot express any opinion upon its validity. If the council is in favor of the closing of all classes of shops during certain hours, we think it would be better to repeal the present by-law and pass a new by-law without any regard to the petition referred to in subsection 3. By adopting this course you will do away with the possible objection that the by-law was passed pursuant to the petition presented to the council and that it therefore must be regarded as a by-law passed under subsection 3, and if so the petition not having been signed by a sufficient number the by-law must be held invalid. We do not agree with this contention, but to guard against any such objection as that, we would suggest the passing of a new by-law without regard to any petition, requiring all classes of shops, or all such classes as the council sees fit to deal with to be closed.

#### Surface Water on the Highway.

**247.**—W. R.—I. A, B and C own lots to the south of a township road, and D, E and F own lots to the north of the road. A tract of wet land extends through all of said lots, the natural course of the water being from A, B and C, across the road on to D, E and F. The road has been raised by drawing clay and gravel to make a road-bed, and there not being any culverts put in, the water is kept back on A, B and C's land. Can the council be compelled to put in surface culverts?

2. If said culverts are put in, can D, E and F close them up?

1. No, and they should not do so if they thereby would cause an extra quantity of water to flow upon the lands of D, E and F.

2. D, E and F can erect such embankments as they may deem necessary to prevent the flow of the water through the culverts upon their lands. From the facts, as stated, we are of opinion that this is a case where proceedings should be initiated under the Ditches and Water-courses Act, and an award made thereunder whereby the rights and interests of all parties concerned could be properly adjusted.

#### A By-Law for Purchase of Land for Park.

**248.**—I. H.—Can a town council purchase and pay \$500 for four acres of land to add to their park by vote, or has it to be submitted to the ratepayers for their approval?

The town council can, by a vote of the majority of its members, acquire this additional land for park purposes (see section 576 of the Municipal Act), but if the \$500, the purchase money, to be paid for the land, is not to be paid within the year in which the debt is incurred the assent of the electors will have to be obtained to a by-law providing for the borrowing of the necessary funds. Since it is not required for the ordinary expenditure of the corporation. (See section 389 of the Municipal Act.)

#### Collection of Taxes from Parohaser From Assessed Owner.

**249.** A. M.—A is an American, his home is in Michigan, but for sixteen years past he has owned real estate with a store thereon, and carried on a lumbering business here. Was assessed last year, as usual, on resident roll for real and personal property, the personal consisting chiefly of logs and ties, which were shipped during summer. He then sold the lots with store and office, with interest in a license on the unlocated lands he held from the Indian Department to B. The tax collector mailed him notice of demand for taxes, and received a letter asking statement of amount of taxes due against his personal property in timber, stating that B, the present owner, who is in possession, was, by agreement, to pay the taxes on the store, and the lots he bought with it, and he has admitted that to the collector, who deferred receiving part till A would remit, since he sent him statement asked for by letter, but so far has waited in vain for the remittance. Now the roll should have been returned on February 1st, last. The collector believes he should distrain on the premises assessed for the whole tax, but asked for sanction of council, who calls a special meeting to consider the matter, and set a date for the return of the roll. The council comes to a dead-lock on it, two put a motion to exempt A's personal property rather than authorize a distress on B; two put motion to instruct collector to have all unpaid taxes in and return his roll May 1st, next, in amendment. The motions are put to vote, when the fifth member refuses to vote for either, and so adjourn. Now, does not sub-section 3, of section 135, Assessment Act, set the collector's duty in this case, or does the amendment of 1899, referring to sub-clauses a, b, c and d affect it at all?

The council should not interfere with the collector in the discharge of his duty in the matter of the collection of these taxes. Section 135, of the Assessment Act prescribes the course he is to pursue in enforcing payment of that part of these taxes, which is properly charged against the real estate. If amount is not paid within fourteen days after demand or notice, (as the case may require) the collector may levy the same with costs, by distress upon the goods and chattels, wherever found, within the county within which the local municipality lies, belonging to or in the possession of the person who is *actually assessed* for the premises, and whose name appears upon the collector's roll for the year as liable therefor, (see clause (1) of subsection 1, of section 135,) or "upon the goods and chattels of the OWNER of the premises, FOUND THEREON, whether such owner is assessed in respect of the premises or not." In this case the collector can, and should seize the goods and chattels of the person assessed, if any such are to be found within the local municipality, the municipality being located in a district without county organization, or upon the goods and chattels of the person to whom he sold, found on the premises, to realize the amount of the taxes against the real estate. (See clause 3, of subsection 1, of section 135.) Section 135a, of The Assessment Act (enacted by section 11, of The Assessment Amendment Act, 1899,) prescribes the mode of enforcing payment of that part of these taxes which is chargeable against the personalty. If this amount is not paid within fourteen days after demand or notice, (as the case may

be,) the collector may levy the same with costs, by distress "upon the goods and chattels of the PERSON ASSESSED, wherever found within the local municipality." (See sub-section 1, of section 135a,) or upon the goods and chattels of the PERSON ASSESSED, or the interest of the PERSON ASSESSED in the goods and chattels mentioned in sub sections 2 and 3, of the section last quoted. Since the present owner of the premises is not the "person assessed" for the personal estate none of his goods and chattels, nor any part of, or interest in, the same, are seizable to realize the amount of the taxes against the personal estate. If none of the goods and chattels of the "person assessed" can be found, which are liable to seizure under the provisions of section 135a, of the Act, the only course the municipality can pursue to recover the amount of the taxes on the personalty is to sue the former owner, the "person assessed" for the premises, for the amount in an ordinary action at law.

#### A Teacher's Qualification.

250—J. R. P.—Trustees advertise for a teacher, and one answers the advertisement, who is hired without the trustees understanding what authority he had to teach. The agreement was drawn up and signed by the trustees which stated that he held a second-class (non-professional) certificate. He has taught three years on this certificate.

1. Is he a legal teacher?
2. Will we lose any government money, and how much if he is not a legal teacher?
3. Who is responsible for the loss?

1. By subsection 1 of section 2 of the Public Schools Act, 1901, the word "teacher" means "any person holding a legal certificate of qualification." Subsection 5 of section 65 of the Act, authorizes trustees to determine the teachers to be employed, the terms upon which they are to be employed, and their remuneration and rank. By subsection 3 of section 81 of the Act, a teacher, to be deemed a qualified teacher, must, at the time of entering into an agreement with the trustees and during the whole period of the agreement, hold a legal certificate of qualification. Section 85 of the Regulations of the Educational Department, provides that "any person who attends a normal school one term and who passes the prescribed examination, shall be entitled to a second-class public school certificate." Section 87 provides for the extension of a third-class certificate after the expiration of three years. If the teacher engaged is not the possessor of a certificate issued pursuant to the requirements of the Public Schools' Act, and regulation of the Education Department, he should not have been engaged.

2. By clause (c) of sub-section 3, of section 87, of the Public Schools' Act, 1901, it is the duty of the public school inspector to "withhold his order for the amount apportioned from the legislative or municipal grant where the trustees fail to comply with the Act or the regulations of the Education Department." If the

teacher engaged is not a duly qualified teacher, within the meaning of the Public Schools' Act and School Regulations, it is the duty of the inspector to withhold his order for the legislative and municipal grants.

3. As we have stated, it is the duty of the inspector to withhold the grant, and he should report the facts to the Education Department, and leave the trustees to deal with the department; but we cannot say what the Department will do in such case.

#### Assessment of Electric Plant Belonging to a Corporation.

251—J. S.—I would like a little information in regard to assessing a plant belonging to a large corporation. The M. L. R. F. is exempt from taxation to the amount of \$100,000 except the school tax. Now they have in one end of their large factory building an addition but joined together and built all the same time but only one story high. An electric plant supplying our village with 12 and 14 lamps at a cost to us of about \$600 yearly, and all the hotels and private houses that are in line with their main wires principally on our main streets. They have never been assessed for the electric plant. Can I assess the building in part as the factory and the same in part as an electric light plant? What is an electric light plant usually assessed for in a village? Do they put a value on the building that it is in and also assess the poles and wires that lead from the factory to their outside customers?

The portion of the company's buildings used for factory purposes and that used and occupied by it, for the purpose of operating the electric plant, should be both assessed, and a separate valuation placed on each, in the manner prescribed by section 28 of the Assessment Act, and section 1 of the Assessment Amendment Act, 1902. Subsection 3 of section 18 of the Assessment Act, as enacted by section 1 of the Assessment Amendment Act, 1902, provides that the poles, wires, etc., of companies supplying light to municipalities shall be "land" within the meaning of The Assessment Act, and shall, when and so long as in actual use, be assessed at their actual cash value, as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises in and from the municipality, and subject to similar conditions and burdens, regard being had to all circumstances adversely affecting their value, including the non-user of any such property.

#### Qualification of Councillor Whose Taxes Are in Arrears.

252—J. F.—Can a councillor who is in arrears for taxes for one, two or three years, either sit in the council or vote on important questions that come up?

We are of opinion that the councillor in question is qualified to sit and vote in the council.

#### Assessment of Property on Townline.

253—X. Z.—There is a saw mill and hoop factory just north of Head river bridge, on Victoria road, on lot 11 in L. and lot 23 in C., and said mill is on the original road allowance surveyed, but when road was made by government, said original road by engineer was discarded and another road taken by Crown on C. side and comes out on the road allowance further on as the original crossed the river

twice and went through a swamp. This mill has been in operation 3 years and paid no taxes and done very little road-work only as single men of one day. Cannot this mill be assessed by both municipalities and made pay taxes?

2. If so, are not both assessors culpable to the law for not doing their duty in assessing the same?

1. As we understand it, the road upon which this sawmill and factory stand is the original townline between L. and C. Since that townline is in neither township, but is a strip of land lying between the two, although this sawmill and factory are properly assessable, and chargeable with statute labor, we are unable to say that the assessor for either township has any right to place their value or any part of either on his assessment roll. The law in its present state makes no provision for the assessment of property located as this is.

2. Our answer to question No. 1 renders it unnecessary to reply to this.

#### Payment of Accounts for Necessaries for Parties Quarantined.

254—SUBSCRIBER.—Three houses in a municipality were quarantined by the medical health officer, one having a case of smallpox, and the inmates of the other having been exposed by being in contact with the patient. Provisions were supplied by the Board of Health; a local butcher supplied the meat to these houses without any authority from the medical health officer, or any member of the Board of Health, and sent his bill to the council, who refused to pay it, as they considered they had no authority to do so. Has he any chance to collect it in the Courts?

We do not think that he is legally entitled to collect his account from the municipality.

#### Equalization of Union School Assessments Between Urban and Rural Municipalities.

255—R. G. R.—In eagerly scanning the last WORLD I notice Query No. 184 in which J. S. E. says "We have a U. S. S. made up of parts of two townships and the village, etc." If this village is incorporated is it not an Urban union? and if so, what can the assessors equalize? We have one with parts of W., E. & L., the latter a town, but was a village when the union was formed, but the assessors never equalize. Please let me know how it is?

We are of opinion that the law as to the equalization of union school assessments is applicable when a part of the union section is a town or village. The operation of section 54, of the Public Schools' Act, 1901, is not confined to unions between portions of rural municipalities. This idea is borne out by the language used in the latter part of subsection 1, of this section. It provides that "in ANY municipality where more than one assessor is appointed and employed, the reeve or MAYOR of the municipality shall name the assessor, who shall act for and on behalf of such municipality." The use of the word "MAYOR" implies that when a town is a part of the union school section, the assessments should be equalized pursuant to, and as provided in section 54.

**Lands for Location of Electric Light Plant in Village Cannot be Expropriated.**

**256**—G. P. B.—Would you kindly let me know if there is any way by which an owner can be compelled to sell a site for the erection of an Electric Light plant by a village council?

No. Sub-section 2, of section 566, of The Municipal Act, empowers the councils of incorporated villages to pass by-laws for manufacturing and supplying light and heat under the Municipal Light and Heat Act. (R. S. O. 1897, Chap. 234.) Sub-section 3, of section 3, of the latter Act, provides that "the corporation, (which includes an incorporated village,) shall have power to rent or purchase such lands and buildings as they deem necessary or advantageous for the purpose aforesaid." When it is intended to confer the power upon municipal corporations of taking land compulsorily apt words therefor are employed, and, in this instance, such has not been done.

**Well on Highway—Liability of Township.**

**257**—T. C.—1. Some 15 or 20 years ago the people in a small village in our township and surrounding neighbors got up a subscription to sink a well for water on the concession line, which forms the main street in the village. The village is built on both sides of said concession line. The council never was asked to subscribe to such a well nor did they ever object to such. The council took no part for or against. Now as time rolls on, the platform or covering of said well is decayed or rotten, and of course, very dangerous to child, man or beast. Now in case of an accident is the council or municipality liable for the same, or have the council a just right to repair the same to avoid being liable for an accident?

2. Or can the council close up the well and put the same out of dispute?

1. We are of opinion that the council would be liable in damages to any person injured by reason of the dangerous condition of this well.

2. Yes, and it is the council's duty to do so, or to put the well into a condition of safety.

**Assessment of Stock not Paid For.**

**258**—A. C. H.—A stock that was paid for was assessed last year at \$1500 and said stock (or stock of equal value) was sold, the purchaser paying only a small payment down and extending the payment of the balance over a number of years. Should the purchaser of said stock be assessed for the full amount, \$1500, assuming, of course, that the assessment was a proper one last year?

This stock should be assessed at its actual cash value, as it would be appraised in payment of a just debt from a solvent debtor, (section 28, of The Assessment Act,) less the amount of the just debt owed by the owner on account of such stock. (Sub-section 24, of section seven, of the Act.)

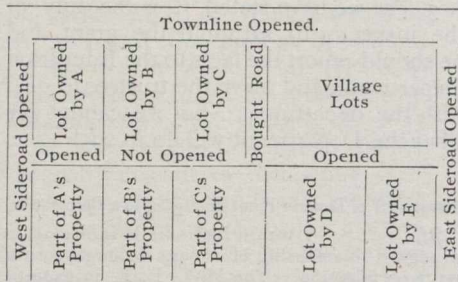
**Opening of Road Allowance in Possession of Private Parties.**

**259**—A. S. SUBSCRIBER.—You will see by following diagram that highway across B & C's lots has never been opened. E petitions council to open said road across those two lots. A and B have been tilling the highway across these lots for a good number of years. Please give the

proper steps for council to take to open road across said two lots?

2. Does it require a by-law?

3. Have B and C any claim on said road or can they claim any compensation for work done on road, as I presume they stumped and logged a portion of it.



1 and 2. The council can open this portion of the road allowance, by passing a by-law pursuant to section 642, of The Municipal Act. Prior to the passing of this by-law the council should give the persons in possession of the road allowance the notice mentioned in section 643, of the Act. It may be that the circumstances of this case do not bring it within section 642, but as a matter of precaution a by-law had better be passed, and the notice provided by section 643 given.

3. No.

**Assessment of Income.**

**260**—J. C.—A party coming from another Province and now a resident of this place, can he be assessed for income on salary? Some are of the opinion he can be assessed, others not. The party referred to was a resident of the N. W. Territory, but is now bank manager here.

The income assessable is not the income for the present year but the income for the past year, and as the party referred to came from another province we do not think that the income which he received there can be assessed. We are assuming that he has recently come from another province, and that he resided last year in such other province.

**Opening Road Allowance in Possession of Private Party.**

**261**—W. D. M.—In opening a road allowance which is at present in possession of a private individual and on which he has crop, can the council proceed to open the road after having passed by-law under sec. 642 of the Municipal Act, or must they allow the present occupant sufficient time to get his crop removed?

It is not stated whether this person has been in possession of this road allowance by reason of another road being used in lieu thereof within the meaning of section 642 of the Municipal Act. If such is the case, the council can proceed to open the road, after having passed a by-law pursuant to section 642 of the Act, provided the council has, prior to the passing of this by-law, given the party in possession notice in writing at least eight days before the meeting of the council, that an application will be made for opening such road allowance. The party in question is not entitled to time within which to take his crop off.

**Closing of Road—Rights to Gravel of Riparian Owners, —Township Should Build Bridge.**

**262**—SUBSCRIBER—1. Has owner of a certain lot bordering on the River T any power to close a road running through the said lot to the river for the purpose of the public to get gravel for the roads of the municipality? the said road having been opened about 40 years ago but nothing in the registry to show there is any such road. I think there was a certain clause in some deed giving it for a road.

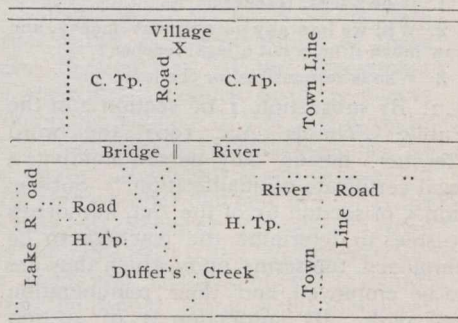
2. How long peaceable possession is required to hold it, or is there any limit to such a road?

3. Have such owners any power to lease gravel-pit and new road leading thereto? the gravel being in the bottom of the river and covered with water only in a very dry time. The lease they have given extends to the middle of the stream while their patent calls to the water's edge. There is also an island in the river about the same place. Whose property is that?

4. Has township council power to build bridge from old road over to the island and remove gravel. The bridge would be very low as the island is only visible in low water?

5. Is it the county council's duty to build and maintain a bridge as specified below?

You will notice I marked the bridge crossing the river and the road running along the river, but the bridge over the Duffer creek I did not mark, which is 135 feet long, and the one I have referred to. You will also notice that the river divides the two townships, and although the road is all in H township, it follows the river in some places and other places it deviates, as you will notice, at the point in question, although the bridge over Duffer's creek would only be about 15 rods from river and about the same distance from bridge over the river.



1. We doubt very much if the municipality can claim the road in question as a public highway, under the circumstances stated, and should not advise it to endeavor to do so. The road does not appear to have been used as an ordinary highway but as a road at certain seasons of the year for getting gravel out of the bed of the river.

2. Apart from the question of dedication, a user of twenty years at least is required to acquire a right to own land as a road, as against the owner of the soil.

3. In the case of Kains vs. Turville, 32 U. C. Q. B. 17, Draper, C. J., lays down the law as follows: "The law is too well settled to require any extended reference to authorities to establish the rule that in streams and rivers which are not navigable, a description of land which extends to the water's edge, or to the bank, carries the grant or conveyance to the thread of the stream, and that the description continuing along the water's edge, or along the bank, will extend along the middle, or thread, of the stream, unless, indeed,

there be more words forming part of the description, or introduced by way of exception, which clearly excludes whatever may lie between the water's edge, or the bank, and the *medium filum aquae*."

In regard to the island, the law appears to be as follows: *Prima facie* the title to the bed of an unnavigable stream to the thread thereof and to islands between the mainland and such thread is in the owner of the adjacent mainland. When the lands on both sides of the stream belong to the same person, the entire bed of the stream and all the islands therein between such land belong to him. If an island be so situate that it is partly on one side and partly on the other of the thread of the stream it will be divided by such line and held in severalty by the adjacent proprietors.

4. No.

5. This is not, apparently, a bridge over a river or stream forming or crossing a boundary line between any two municipalities within the county, (since the road on which it is located lies wholly within the township of H) within the meaning of section 617 of the Municipal Act; nor is it a bridge over a river or stream over one hundred feet in width, within the limits of a village, within the meaning of subsection 2 of section 616. Therefore, unless the county council has assumed the bridge as provided in subsection 1 of section 714, with the assent of the council of H, the council of the latter municipality will have to erect and maintain the bridge.

Preparation of List of Voter's on By-Law.

263—E. D.—When a vote is being taken on a by-law do you consider it necessary, under section 348, chapter 223, R. S. O. 1897, for the clerk to write in the names alphabetically in poll-book, as well as supplying the D. R. O. with certified copy of voter's list in each ward or polling sub-division?

This section does not require the clerk to enter the names of persons entitled to vote on a by-law alphabetically in each poll-book, as well as to furnish each deputy-returning officer with a certified list of voters in his polling sub-division. Either of these will be a compliance with the provisions of the section. If he follows the course of inserting the names in the poll-books, he should, of course, attest the list on each poll-book, as required by this section. In either case, the list should be prepared by the clerk from the last revised assessment roll of the municipality, and wholly without reference to the MUNICIPAL voters' list.

Liability of County for Raising Grade on Road by Electric Railway Company.

264—D. P.—A road was built about 20 years ago in the township of S by the county council of W, and kept up as a toll road. For a number of years it got out of repair. An engineer condemned it and the toll was taken off and the county abandoned it and it was assumed by the township and kept in repair for a number of years. In the meantime an electric railway was built with the consent of the town-

ship partly on said road and partly on land taken from the front of the lots adjoining said road. Now the company in building the railroad raised the grade in front of Mr. O's farm about four feet on his crossing going into said farm making a very steep grade from the main road going over railroad. The county having again assumed the road Mr. O. now wants the county to raise the main road to level up his crossing, it being all right before the railroad was built. Now, who is liable? I claim that as the county has done nothing to cause the nuisance they are not liable.

Any injury that this party has sustained has been apparently occasioned by the railway company in constructing their railway, and he should look to the railway company for compensation and not the county, but we express no opinion as to his right to recover compensation from the railway company.

Council's Liability to Pay for Snow Fences.

265—G. E.—Can a council legally provide wire-fence to certain farmers along the main road to be repaid in instalments and then collect the price similar to collecting taxes? There are certain parts of the roads which drift badly in winter and the farmers are too poor to provide a wire fence. The council wishes to keep the roads from being drifted, and would furnish the fence, if legal, to be repaid in instalments by the farmers, provided the price could be legally collected in small sums, same as taxes?

Under the provisions of the Act respecting snow fences, (R. S. O., 1897, chap. 240,) a municipal council may require owners having fences along the highway which cause the drifting or accumulation of snow, to remove such fences, and to replace them with such other fences, (wire or otherwise) as will obviate the difficulty. Provision is made by the Act for the compensating of such owners for any additional expense they are put to by reason of being compelled to remove the old fence, and to erect a new one of more expensive description. There is no provision for requiring the repayment to the municipality of the compensation paid, or otherwise. See also sub-section 5, of section 545, of the Municipal Act.

Transfer of Government Location.

266—INQUIRER.—1. A and B got located for a government lot 30 or 40 years ago, paid nothing on it; some years ago sold their claim to C. The government recognizes C's claim and D wishes to buy the lot and writes to government. Government writes back that lot belongs to C. If D buys C's claim will the lot be legally his? C can give no deed.

2. If D buys C's claim could any other person buy it from the government?

3. Which would be the best way to proceed in the matter?

1. In order to constitute D the owner of C's claim to this land, the parties must obtain the consent of the government to the transfer.

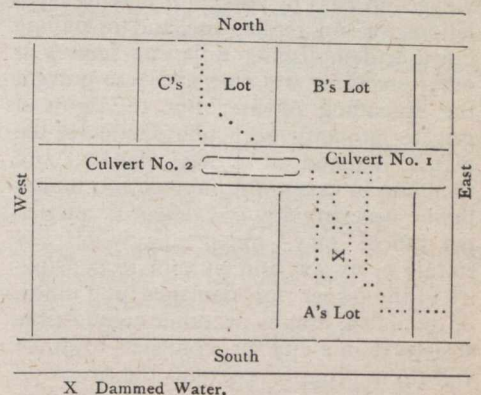
2. Yes. Subject to the interest of C in the land, whatever that might be.

3. The only satisfactory way of arranging this matter is the surrender by C to the government of his interest in, or claim to the land, and the issue by the government of a new license, location ticket, or lease, as the case may require, to D.

Change of Course of Stream—Rights and Inabilities of Council and Private Parties.

267—A. M. L.—In the diagram below there is shown the present course of a spring creek which flows through A's lot, then down the road a few rods when a portion of the water flows through culvert No. 1 and continues into B's field, then returns to the road ditch and flows down the north side and joins the rest of the water which flows through culvert No. 2, and then continues into C's lot. The dotted portion represents that part of creek that was diverted a long time ago by the road beat when they fixed the road in the first place. The beat put in culverts sending the water down both sides of the road but did not send it into B's lot. The original course, according to statements made by all the old settlers, was not into B's lot, but 16 or 17 years ago B and his son began drawing the water in on their own lot by digging ditch and damming at north west corner of culvert No. 1. As the road was sinking badly the council graded the road by ditching the sides from culvert No. 2 within a few feet of culvert No. 1. The sediment which comes down the stream lodges in the ditches and culvert but particularly so around culvert No. 1, very much on account of the course given the stream by B. The heavy lined part of ditches represents what was cleaned out by council. If council continues the ditches until they strike the water flowing through culvert No. 1, B will lose the water. The circular line represents the dammed water on A. If ditches were completed road would be greatly improved, and would take all the water off A.

1. If water is cut off from B, can he claim damages from council?
2. Can the original course of a stream be changed?
3. If so, would 16 or 17 years be sufficiently long to do that?
4. What is the best course for council to pursue?
5. Is it possible to appeal from an engineer's award?
6. What could A do in regard to getting an outlet for dammed water?



- X Dammed Water.
1. Not under the circumstances stated, but we would advise the council to take no action until required to do so by the award of an engineer, under the provisions of the Ditches and Watercourses Act.
  2. The original course of a stream can be changed for the purpose of straightening it (see sub-section 1 of section 3 of chapter 226, R. S. O., 1897) but this should be done only on the report of an engineer appointed to examine and report on drainage works. The diverting of water from its natural course is a dangerous practice, and, generally speaking is not permissible but this does not appear to be a natural watercourse. It appears to be merely surface water.

3. The length of time the water has been running in its present channel or channels does not affect the question.

4. The council should do nothing, but leave the parties interested to the remedy provided by the Ditches and Watercourses Act, unless the construction of a new drain or the improvement of the existing drain is necessary to put and keep the roadway in a condition of safety, when the council can initiate proceedings under the Act.

5. Yes. See section 22 of the Ditches and Watercourses Act. (R. S. O., 1897, chap. 285.)

6. A can initiate proceedings under the provisions of the Ditches and Watercourses Act, to have an award made by a competent engineer, whereby the rights and interests of all parties concerned can be properly adjusted.

#### Pulling Down Buildings to Prevent Spread of Fire— By-law Prohibiting Deposit of Rubbish on Streets.

268—H. S. N.—1. How should a fire brigade be organized, so that when it is thought a building which is not already on fire, should be destroyed in order to prevent spread, the same may be done even against the protest of owner and insurance recovered on said property, or where there is no insurance, no person will be held responsible? Upon what authority and under whose instructions should such destruction of property be proceeded with?

2. How would we proceed to make a worthless character in village remove unsightly objects from street side, such as remains of old buggies, etc., without the municipality being at any cost?

1. Subsection 12, of section 542, of the Municipal Act, empowers councils of villages to pass by-laws "for making regulations for suppressing fire, and for pulling down or demolishing adjacent houses or other erections, when necessary to prevent the spreading of fire," but the rights of private property are subordinate to the higher demand of public welfare, and therefore in cases of imminent and urgent public necessity any individual or municipal officer may, independently of any statute or by-law, and without responsibility to the owner for damages, pull down, or demolish, houses or other combustible structures in a city or compact town (or village) in order to prevent the spread of an existing conflagration. (Dillon on municipal corporations, section 955, et seq.) and this right has long been recognized by the law of England. An ordinary fire insurance policy would cover a loss of this kind.

2. The council should pass a by-law, pursuant to subsection 6, of section 557, of the Municipal Act, as amended by section 28 of the Municipal Amendment Act, 1900, imposing a penalty on persons depositing rubbish on the streets of the municipality. As to the authority for imposing the penalty, see clause (b) of subsection 2 of section 702 of the Act.

#### Conduct of Business at Council Meeting.

269—OLD SUBSCRIBER—Our reeve had to go to hospital for medical treatment. Our council

adjourned at the January meeting to the 5th February. Reeve wanted clerk to put back meeting for a few weeks if he would not be back before then. The clerk notified three members of the council. They said if it was necessary to hold the meeting to hold it on the 15th February. The clerk said it was necessary, that an assessor had to be appointed and other important business had to be transacted. We held the meeting; three councillors were present; reeve and one councillor were absent. We appointed a chairman in absence of the reeve and proceeded with business. The reeve holds that the meeting is illegal, that the clerk had every right to put back the meeting and that as reeve, he will not sign the minutes transacted at said meeting at the June meeting.

1. Is the clerk justified in doing what he did under the circumstances?

2. Are the proceedings of the meeting legal, being transacted in a straightforward manner by three councillors?

1. Yes. He could not have legally acted otherwise. The council, at its January meeting, appointed the 15th of February as the date of its next meeting, by resolution, and the clerk had no power to alter the date of the latter meeting.

2. Yes. Your council being composed of five members, three constitutes a quorum, and they were present at the meeting. (See section 268, of the Municipal Act.) All motions or resolutions submitted to the council at the meeting should have received the concurrent votes of all three members present in order to carry. (See section 269.)

3. As we understand it, the reeve did not preside, nor was he present at the meeting of the 15th of February. Therefore he is not the proper party to sign the minutes of that meeting. They should be signed by the clerk, and by the member of the council who was selected to and did preside at the meeting.

#### Placing of Non-Resident Tenant on Voters List

270—G. S. Cannot agree with you as to placing name of non-resident tenant in part 1 of the voters list, as I think that one of the requisites for a party to have his name on part one of the voters list is that he is entitled to vote for a member of the legislature, and unless a person is resident of the municipality at the time provided by statute for beginning to make the assessment roll in the municipality, he is not so entitled. See Sec. 15 of the Assessment Act. Am, however, open for conviction.

We must adhere to our reply to question No. 202 (1902, April issue) for the reason there given and in our answer to question No. 165 (1902, March issue). The section you quote has reference entirely to parties possessing the manhood franchise qualification only.

#### Road in Possession of Private Individual—Opening of, and Sale of Timber On It.

271—A SUBSCRIBER—I have and own the land on each side of a concession line and have had it (the concession) fenced in with the land for 40 years. The council are talking of selling the timber off concession line. Can they sell it without my permission? or can they open the concession without paying me for the same?

The fact of your having had this portion of the concession road allowance fenced in with your land for forty years, does not give you any interest or title therein, or in the timber growing thereon.

The council has power to pass a by-law for the sale of this timber (subsection 7 of section 640 of the Municipal Act) and for opening the road allowance (section 642 of the Act) without your permission before doing so. If, however, the case is one within the provisions of section 642, the council should, before passing the by-law for the opening of the road allowance, give you the notice mentioned in subsection 2 of this section.

#### Acquisition by Town of Land for Park Purposes.

272—G. G. A.—On 16th January, 1886, the mayor and treasurer execute a tax deed of a town lot which deed recites that: (in the statutory form)

"Whereas by virtue of a warrant under the hand of the mayor and seal of the said town, bearing date the 26th day of August, A.D., 1884, commanding the treasurer of the said town to levy upon the lands hereinafter mentioned for the arrears of taxes due thereon with his costs, the treasurer of the said town, did on the 9th day of December A.D., 1884, sell by public auction to A. T., who assigned the same to the corporation of the town of M., in the county of . . . that certain parcel or tract of land, etc.," and the operative words are as in the statutory form;

"Do hereby grant, bargain and sell unto the said corporation of the town of M., their successors and assigns, etc."

There appears to be now no proof that notice in writing of the intention of the council to purchase was given under section 184, (3) of the Assessment Act. The land has been held (and enclosed by fences) by the town corporation since the date of the deed as a public park; but no by-law appears to have been passed authorizing the entering upon, taking, using, or acquiring the land for a park.

1. Is the tax-deed mentioned sufficient to pass the fee in the land to the town corporation as it purports to do?

2. On the question of notice of the intention of the council to purchase the lands, would such notice be now presumed, having regard to the lapse of many years since?

3. Would a fresh tax-deed now issued to A. T. above named "in trust and to the use of the corporation of the town of M." be sufficient to convey the fee simple in the lands to the town corporation? There seems no authority under the Act to convey land in trust.

4. I might add that no adverse claim appears to have been made to the lands, and the former owners appear to have been under no legal disability, and under these circumstances would not the Statute of Limitations bar any adverse claim at this date?

If the deed was sufficient to convey the fee simple in the lands to the town corporation, I presume the absence of a by-law authorizing a park, etc., for which the land was acquired, would place the lands under the Mortmain Acts, since they were not sold within three years. It occurred to me that one way to get over the difficulty would be for the mayor and treasurer to issue a fresh tax-deed to A. T. and have him execute a quit claim deed to the town corporation, but A. T.'s wife refuses to sign the deed and her dower would attach on the execution of the tax deed to A. T. unless such tax-deed were made in trust or to the use of the town corporation.

We cannot find any authority for the course adopted in this case. Though you do not say so expressly, we infer that the sale of the lands in question to A. T. was made for the benefit of the corporation of M, to which A. T. assigned the lands. A municipal corporation cannot purchase land except under some statute authorizing the purchase, and in the manne

provided by such statute. The only way by which the municipality could acquire the land in question legally by reason of the non-payment of taxes, was in the manner provided by section 184, of the Assessment Act, and even in that case the municipality would have to sell the lands within seven years from the time when they were acquired. From what we have said we do not think that a fresh deed from A. T. in the manner suggested by you would help matters in the least. The only course we can suggest is the passing of a by-law, under section 576, of the Municipal Act. If that be done, any person claiming to be entitled to compensation will have to take proceedings within the time limited by section 438, of the Municipal Act. If the circumstances are now such as to render this course unsatisfactory, the council will have to apply to the legislature for relief.

Assessment of Telephone Company.

273—E. T.—We have in our township a telephone company, which is not assessed; can we assess the company? and if so, how can we do it?

A company of this kind is assessable under the provisions of section 18 of the Assessment Act as enacted by section 1 of the Assessment Amendment Act, 1902. Subsection 2 of this section provides that the land "of companies of this description shall be assessed in municipalities divided into wards in the ward in which the head office of the company is located. If such head office is not situated in the municipality, then the assessment may be in any ward thereof. By subsection 3 the poles, wires, substructures and superstructures of such a company upon the highways of a municipality are constituted "land" within the meaning of the Assessment Act, and shall, when, and so long as in actual use, be assessed at their actual cash value, as the same would be appraised upon a sale to another company possessing similar powers, rights and franchises in and from the municipality, and subject to similar conditions and burdens, regard being had to all circumstance adversely affecting their value, including the non user of any such property, etc.

Seizure of Machinery Not Paid For.

274—I. A.—Enclosed find letter from the M. C. F. M. Co. of . . . . and also one from A. T. S., our tax collector. I might just say by way of explanation, that Mr. S could not collect the taxes from this man and the only thing he could get to seize was the fanning mill and the council thought he was quite justified in seizing and selling this, which he did with the result as per the company's letter. Will you kindly let me know by return mail if the company can claim and hold this fanning mill against taxes, and if so, if the mill is delivered to them, can they claim pay for it? If they have a right to hold the mill against taxes we can get it back from the purchaser and leave it where it was or sell same to them or their agent. How should we write them in this matter?

Clause 2 of subsection 1 of section 135, of the Assessment Act, provides, that distress for taxes may be made "upon the

interest of any person assessed in any goods on the premises, including his interest in any goods to the possession of which he is entitled under a contract for purchase, or a contract by which he may or is to become the owner thereof upon performance of any condition." Assuming that the passing of the property in the fanning-mill from the vendor to the purchaser was conditional on payment in full of the purchase-money, under the above subsection the collector could therefore seize and sell only the interest of the person assessed, whatever that actually was, in the fanning-mill. In other words, the collector could only sell subject to the rights of the unpaid vendor.

Traction Engines on Highways.

275—A. D. A.—In the township adjoining ours two gentlemen own traction engines, and use the same for power for threshing, cutting wood, and straw and grinding grain in our township, going from one farmer to another, at certain times during the year, and cutting the roads up very badly when muddy, and breaking the planks in many of our bridges when passing over them.

1. Does the Act to authorize and regulate the use of traction engines on highways, chapter 242, page 2945, R. S. O., 1897, refer to the above engines as well as those for carrying freight and passengers as stated in section 1 of same chapter?
2. Is section 10 applicable to the owners of the engines?
3. If they break the plank on our bridges can our council compel them to pay for damages?
4. Should an engine break through a bridge could the owner thereof come on council of township for damages?
5. If the owner refuses to settle for any damages done to bridges by his engine, does section 16, page 2948, penalty clause apply to him?
6. When the roads are muddy the owners of these engines bolt on the wheels "mud spikes" and we have found in passing over our bridges those spikes go through the planks and split pieces off underneath. Has a municipality power to pass a by-law prohibiting the owners of such engines from using those mud spikes in going over the bridges?
7. Also, has a council power to prohibit the running of such engines upon the highways when the roads are muddy, say in the late fall and early spring.
8. Would it be wise for the council to notify the owners of the engines, drawing their attention to the statutes, and requesting attention to same?

We have found the traction engines an expense to the township by breaking down many of our bridges, and also a very great nuisance in the spring and fall by going upon our roads and cutting great ruts in them.

1. Yes.
2. Yes.
3. Yes.
4. No.
5. Yes.
6. No.
7. No.
8. We see no objection to the council following such a course.

Changing of Date of Holding Township Court of Revision.

276 M. C.—Can you inform me if the council have power to change the date of holding court of revision of the assessment roll? My reason for asking, is that the date for holding said court in the township of S. is on the 29th day of May, and the provincial elections will be on the same date, and I cannot attend to both.

As the day for the holding of the first sittings of the annual court of revision in a township is not a date fixed by statute, there is no legal reason why your council should not, at its next meeting, change the date now appointed for holding such sittings. No person can be prejudiced by a change in this date, as all parties who may be complained against must be served with the special notice prescribed by the Assessment Act.

Duties of Councils and Trustees as to Non-Resident Pupils.

277—G. A. M.—In school section No. 2 of this township there are three or four ratepayers who want to send their children to the school of section No. 3. Their reason is that the school in section 3 is much the better school, and in the winter the children have a very bad road to go to their own school?

1. Can the township council direct that the property of these ratepayers be assessed as being in school section No. 3?
2. If the trustees of section 3 be unwilling to admit these children on account of lack of accommodation, and the trustees of section 2 be unwilling to remit the school rates of these ratepayers, is there any way in which they can proceed to get what they want?
3. If the board of section 3 be willing to admit the children upon consideration of getting the school rates which their guardians pay to section 2, but the board of section 2 be unwilling to remit these rates, is there any remedy?
4. Has the township council anything to do with such a dispute?
  1. No.
  2. In order to require the trustees of school section No. 3 to admit to their school the children from school section No. 2, it will be necessary to show that the children in school section No. 2 reside NEARER the school-house, in school section No. 3, than that in their own section, and that the inspector reports the accommodation of the school-room, in school section 3, sufficient for the admission of such pupils. (See sub-section 1, of section 95, of the Act.) As nothing is stated as to these conditions, we cannot give this question a definite reply.
  3. No.
  4. No.

Parties Should Have Recourse to the Ditches and Watercourses Act.

278—H. E.—On the roadside in our township is a small basin which has always been there, and holds water for a considerable part of the summer, and at certain times in the spring season the water is thrown back into a neighbor's barnyard. Natural drainage will take away the water, excepting, perhaps, about eighteen inches. Can the council be compelled to open a drain through private property adjoining in order to drain the basin?

A council has no authority of its own motion to enter upon the lands of private parties to construct drainage out-

lets. This is a case where the person aggrieved or suffering damage should institute proceedings under the Ditches and Watercourses Act for the making of an award whereby the rights and interests of all parties concerned would be properly adjusted.

#### Duties of Collector.

279—G. H. Please tell me, if a man having land in the municipality of G, and assessed as owner on the roll, and works some of the land in G, but lives in another township in the same county, is the collector for G obliged to go out to the other township and see if he has chattels there, there being no personal property assessed?

2. Or can he return the tax on land in G, there being nothing on the land in G to get?

3. If he cannot return it on the land, please explain section 156 of Glenn's Guide. It seems to suit this case.

1. Clause 1, of subsection 1, of section 135 of the Assessment Act, provides that, if any person neglects to pay his taxes within fourteen days after demand or notice served (as the case may be), the collector may, by himself or by his agent, levy the same with costs upon the goods and chattels wherever found within the county, within which the municipality lies, belonging to or in the possession of the person who is actually assessed for the premises, and whose name appears upon the collector's roll for the year, as liable therefor. Consequently before the collector in this case can make the return of his roll, pursuant to section 148 of the Act, he must first ascertain whether this owner has any goods seizable under the provisions of sections 135 in the adjoining township where he resides, and, if he has, and does not pay his taxes within the time mentioned in this section, the collector should seize and sell the same to realize the amount.

2. Not until he has ascertained that there are no other goods within the county seizable for these taxes under the provisions of section 135.

3. Section 156, of the Act, applies only to cases mentioned in the preceding section (155), that is to non-resident lands which have become occupied or built upon since the arrears returned by the county treasurer to the township clerk have become payable in respect thereof.

Road reform is progressing in East Gwillimbury. Last year the council allowed the ratepayers the privilege of commuting one third of their statute labor at sixty cents per day, the council expending the same in contract work. The last election, we are informed, was largely fought on these grounds and the result is in favor of the abolition of statute labor.

Actor—Hurry up, or we'll miss the train.

Actress—I can't find my diamonds or my purse.

Actor—Oh, well, never mind.

Actress—Yes, but the purse had a dollar in it.

#### Drainage on Railway Property.

In moving the second reading of his bill respecting drainage on and across the property of railway companies, M. K. Cowan (South Essex) gave a brief sketch of the history of the legislation with respect to this intricate and troublesome question. He explained that the object of the bill was to adopt the legislation by the legislatures of the various provinces with respect to drainage across the lands of private owners, and make it applicable also to drainage across the lands of a railway company. Provision was made for a conference between the engineers of the railway and the official of the municipality to determine the point at which the railway should be crossed and other matters of details, with right of appeal to the county judge. The difficulty which arose from the objection of the railway company to allow other bodies to construct culverts or other works upon their property was overcome by a provision that the company may itself do such work. In the counties of Essex, Kent, Elgin and Lambton there were, he pointed out, large tracts of land, the natural drainage of which had been entirely blocked by the right of way of the railway companies which intersect these counties from east to west. As there were, owing to the physical features of the country, no "watercourses," under the interpretation placed upon the language of the statute, to carry off the surface water, the farmers could obtain no redress without appeal to the Railway Committee of the Privy Council, an ordeal of such a formidable nature that it frightened the average farmer off. The consequence was that a large percentage of farmers lose their crops every few years owing to the water lying on the land. Mr. Cowan said there was no question the railway companies were antagonistic to the works of drainage through these counties, the cost of which bore heavily upon the farmers and municipalities, amounting to a direct tax ranging from 75c. to \$3 per acre. He gave as an illustration a case in which a railway company insisted upon an advance payment of \$1,500 before they would allow the girders of their track to be raised in order to allow a dredge, which was engaged in the work of constructing a drain under contract with the municipality, to pass under the railway track, although the actual cost of the alteration to the company was represented by the labor of twelve men for a few hours on Sunday. When the drainage was completed the railway company refused to allow the dredge to pass out again without another payment in advance of \$1,500. Mr. Cowan figured out that the railway company, in this instance, charged \$31 per hour for labor for which they paid their employees 12½ cents.

The bill was given second reading, and referred to the committee on Railways and Canals.

#### The National Conference of Charities and Correction.

Dr. Rosebrugh, of Toronto, Secretary of the Canadian Conference of Charities and Correction, writes as follows: "Permit me to call attention to the annual meeting of the Conference of Charities and Correction of the United States and Canada which will be held this year almost at our doors, namely at Detroit, Michigan, commencing May 28th and lasting one week. This will be a rare opportunity for people in Ontario, and especially western Ontario, to attend this important Conference. In addition to papers, addresses, discussions, the following standing committees will report, viz.: 1. Reports from States and Canada. 2. On county and municipal charity. 3. On care of feeble-minded and epileptics. 4. On prisons and reformatories for adults. 5. On care of destitute and neglected children. 6. On reformatories and industrial schools. 7. On organization of charity. 8. On politics in charitable affairs. 9. On public policy in the care of the insane. 10. On jails, lockups, etc. 11. On state boards and commissions.

We will be glad to see a large representation from Ontario."

Under the modern way of doing road-work in the township of Tecumseth, the Cookstown portion of Tecumseth township furnishes from seventy to seventy-five days work as statute labor. With the exception of a little tinkering at the sidewalk, the gravel represented by one hundred and forty to one hundred and fifty days work, has been diverted to opening and improving roads in the township, and this village has been done out of its just rights, as not one ounce of gravel has been put on our streets for the past two years by the township. Every farmer who uses this market is deeply interested in this matter. We have suffered long from unfair treatment.—Cookstown Advocate.

Neepawa, Manitoba, has had upwards of a year's experience in the ownership and operation of a lighting plant and a telephone service by the municipality. It has 1,400 incandescent lights installed, and 150 street lights, and has 129 telephones. The cost of operation for somewhat more than a year has been \$5,779.36, and the receipts have amounted to \$7,804.73, showing a total gain of \$2,025.37.—E.x.

The township of Kitley voted down the by-law to do away with statute labor. Wolford did the same. The ratepayers of Kitley and Wolford are evidently quite satisfied with their present system of road-making.

Husband—I cannot get the castors under the book case to work at all, and I've oiled them twice.

Wife (with conscious superiority)—But you didn't use castor oil.